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In re Application of :
Kim, Yong Joo :
Application No. ~~10/755,835~~ 10/775,835 :
Filed: February 9, 2004 :
Attorney Docket No. 2080-3-227 :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.10(d), filed April 29, 2005, requesting that the above-identified application be accorded a filing date of February 6, 2004, rather than the presently accorded date of February 9, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be referred to Technology Center AU 2625 with the presently accorded filing date of February 9, 2004.

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS.

The showing under 37 CFR 1.10(d) must be corroborated by (1) evidence from the USPS, or (2) evidence that came into being after deposit and within one business day of the deposit of the correspondence as "Express Mail." Evidence from the USPS may be the "Express Mail" Corporate Account Mailing Statement. Due to the questionable reliability of evidence from a party other than the USPS that did not come into being contemporaneously with the deposit of the correspondence with the USPS, 37 CFR 1.10(d) specifically requires that any petition under 37 CFR 1.10(d) be corroborated either by evidence from the USPS, or by evidence that came into being after deposit and within one business day after the deposit of the correspondence as "Express Mail." Evidence that came into being within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. Conversely, evidence created prior to the deposit of the correspondence as "Express Mail" with the USPS (e.g., an application transmittal cover letter, or a client letter

prepared prior to the deposit of the correspondence); or created more than one business day after the deposit of the correspondence as "Express Mail" (e.g., an affidavit or declaration prepared more than one business day after the correspondence was deposited with the USPS as "Express Mail") cannot be accepted under the terms of the rule.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on February 6, 2004, pursuant to the requirements of 37 CFR 1.10. In support, petitioner has submitted a copy of the Pick Up Service Statement, the "Express Mail" mailing label and Declarations from Emil D. Byun and Margie A. Uribe.

A grantable petition under 37 CFR 1.10(d) must include:

- (1) The filing of a petition promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The placement of the "Express Mail" number on the mailing label of the paper(s) or fee(s) that constitutes the correspondence prior to the original mailing by "Express Mail"; and
- (3) A showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition lacks item (3). In this regard, petitioner has not submitted the evidence necessary to establish that the package at issue was deposited by Express Mail on February 6, 2004. The declarations submitted with the petition are not considered to be evidence that came into being within one business day and are, at best, conclusions not based on facts in evidence. As noted above, 37 CFR 1.10(d) specifically requires that any petition under 37 CFR 1.10(d) be corroborated either by evidence from the USPS, or by evidence that came into being after deposit and within one business day after the deposit of the correspondence as "Express Mail." The declarations submitted are not the type of evidence required by 37 CFR 1.10(d) to establish the date of deposit of the package in question by Express Mail. The evidence does establish that the package in question was given a "date-in" of February 9, 2004 and that is the date accorded to this application.

Petitioner is advised that correspondence should be deposited with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

Accordingly, petitioner has not met the showing required under 37 CFR 1.10(d)(3).

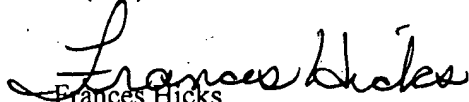
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